

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, DC 20007**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

STEVEN A. AUGUSTINO

DIRECT LINE: (202) 342-8612

EMAIL: saugustino@kelleydrye.com

NEW YORK, NY  
LOS ANGELES, CA  
HOUSTON, TX  
AUSTIN, TX  
CHICAGO, IL  
PARSIPPANY, NJ  
STAMFORD, CT  
BRUSSELS, BELGIUM

AFFILIATE OFFICE  
MUMBAI, INDIA

February 7, 2018

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Filing,  
Zipwhip, Inc., WC Docket No. 95-155; WT Docket No. 08-7**

Dear Ms. Dortch:

On February 5, 2018, Zipwhip, Inc. and its undersigned counsel met with Jay Schwarz, Wireline Advisor to Chairman Pai to discuss Somos's petition for declaratory ruling seeking new rules that would require registration of text-enabled toll-free numbers.<sup>1</sup> In attendance on behalf of Zipwhip were John Lauer and James Lapic (both participating by phone). Steven A. Augustino and Avonne Bell of Kelley Drye & Warren LLP attended in person. The attached materials were made available during the meeting.

Zipwhip urged the Commission to reject Somos's attempts to expand the Commission's regulatory regime to encompass authentication for toll-free texting and, accordingly, to deny the Petition. Texting to toll-free numbers is an example of the success of light-touch regulatory policies. The marketplace for this innovative service is thriving and ever evolving. Zipwhip explained that existing industry methods are working and continue to do an effective job of validating subscriber identity and ownership before text-enabling new toll-free numbers. Industry-accepted approaches like the CTIA Messaging Principles and Best Practices

<sup>1</sup> Petition of Somos, Inc. for a Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, WC Docket No. 95-155 (filed Oct. 28, 2016) ("Petition"). See Public Notice, Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of Text-Enabled Toll-Free Numbers, DA 16-1259 (rel. Nov. 4, 2016).

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch  
February 7, 2018  
Page 2

provide guidelines that ensure there is proper verification but also flexibility to respond to current and future potential risks to consumers.

Moreover, Zipwhip reemphasized that Somos's Petition is procedurally flawed in that it seeks new rules that would require registration of text-enabled toll-free numbers, which cannot be accomplished through a declaratory ruling. If the Commission granted Somos's Petition, it would serve as a significant expansion of the scope of the existing rules which address only the management of toll-free number assignment for voice services.<sup>2</sup> In addition, Somos's request would establish a regulation-mandated monopoly for Somos's registry, disadvantaging alternative methods.

Zipwhip concluded by stating, as it has before, that Somos's Petition is based on theoretical claims of injury and would likely result in actual harm to the consumer interest and the emerging toll-free texting industry. Somos's Petition is contrary to Chairman Pai's regulatory philosophy and should not be granted. The Commission should instead continue to empower new businesses and facilitate innovation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven A. Augustino", with a stylized flourish at the end.

Steven A. Augustino

*Counsel to Zipwhip, Inc.*

---

<sup>2</sup> Somos filed a copy of its summary of a recent meeting in the Commission's Toll-Free Modernization docket. See *Toll-Free Assignment Modernization et al.*, Notice of Proposed Rulemaking, WC Docket No. 17-192, CC Docket No. 95-155 (rel. Sept. 28, 2017). That docket, however, does not implicate the issue at hand. The Toll-Free Modernization proceeding focuses on the use of a more market-based, deregulatory approach for allocation of toll-free numbers, including allowing for the sale of numbers. The rulemaking proposal does not address toll-free texting technology and consequently, does not even contemplate expanding Somos' monopoly over toll-free verification for voice services to the vibrant texting market.